

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 201901748	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/14/2019 7:15 PM	Location of Incident: East 178th Street between Arthur Avenue and Hughes Avenue, 48th Precinct stationhouse.	Precinct: 48	18 Mo. SOL 8/14/2020	EO SOL 3/31/2021	
Date/Time CV Reported Tue, 02/19/2019 8:55 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/26/2019 11:26 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Miguel Donovan	27770	950341	048 PCT
2. POF Sandra Martinez	04343	955139	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Sandra Martinez	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez stopped § 87(2)(b)	
B.POM Miguel Donovan	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan stopped § 87(2)(b)	
C.POF Sandra Martinez	Discourtesy: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez spoke discourteously to § 87(2)(b)	
D.POM Miguel Donovan	Force: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan used physical force against § 87(2)(b)	
E.POM Miguel Donovan	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan threatened to arrest § 87(2)(b)	
F.POM Miguel Donovan	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan threatened to issue a summons to § 87(2)(b)	
G.POM Miguel Donovan	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan frisked § 87(2)(b)	
H.POM Miguel Donovan	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan searched § 87(2)(b)	
I.POM Miguel Donovan	Off. Language: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan made remarks to § 87(2)(b) based upon sexual orientation.	
J.POF Sandra Martinez	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez sexually humiliated § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K.POF Sandra Martinez	Off. Language: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez made remarks to § 87(2)(b) based upon sexual orientation.	
L.POM Miguel Donovan	Discourtesy: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan spoke discourteously to § 87(2)(b)	
M.POM Miguel Donovan	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan failed to provide § 87(2)(b) with a business card.	
N.POF Sandra Martinez	Abuse: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez failed to provide § 87(2)(b) with a business card.	
O.POM Miguel Donovan	Abuse: At the 48th Precinct stationhouse in the Bronx, Police Officer Miguel Donovan refused to provide his name to § 87(2)(b)	
P.POM Miguel Donovan	Abuse: At the 48th Precinct stationhouse in the Bronx, Police Officer Miguel Donovan refused to provide his shield number to § 87(2)(b)	
Q.POM Miguel Donovan	Abuse: At the 48th Precinct stationhouse in the Bronx, Police Officer Miguel Donovan threatened to issue a summons to § 87(2)(b)	
R.POM Miguel Donovan	Abuse: At the 48th Precinct stationhouse in the Bronx, Police Officer Miguel Donovan threatened to arrest § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On February 19, 2019, § 87(2)(b) filed the following complaint with IAB, where it received log # § 87(2)(g). It was referred to the CCRB, where it was received on February 26, 2019 and assigned to Investigator Woroniecki. It was reassigned to Investigator Corwin on July 25, 2019.

At approximately 7:15 p.m. on February 14, 2019, § 87(2)(b) was walking on 178th Street between Hughes Avenue and Arthur Avenue in the Bronx, when Police Officer Sandra Martinez and Police Officer Miguel Donovan, of the 48th Precinct, observed him from their car. PO Martinez came up from behind him and grabbed his arm to stop him (**Allegation A** and **Allegation B: Abuse of Authority: Stop**: § 87(2)(g) § 87(2)(b) asked PO Martinez to “identify herself,” and she allegedly told him, “You know who the fuck we are,” (**Allegation C: Discourtesy: Word**: § 87(2)(g) § 87(2)(b) continued to walk on 178th Street, away from PO Martinez, and took his phone out to call his mother. Before he could place the call, Police Officer Miguel Donovan, also of the 48th Precinct, walked up to § 87(2)(b) grabbed his phone out of his hand, and allegedly pushed him against a wall (**Allegation D: Force: Physical Force**: § 87(2)(g) PO Donovan then told § 87(2)(b) that he could arrest him or give him a summons (**Allegation E: Threat of arrest** and **Allegation F: Threat of Summons**:

§ 87(2)(g)

After § 87(2)(b) provided his identification to PO Martinez, PO Donovan patted down § 87(2)(b) waist and pants (**Allegation G: Abuse of Authority: Frisk**: § 87(2)(g) PO Donovan then allegedly ran his finger on the inside of § 87(2)(b) shoes and allegedly searched inside all of § 87(2)(b) pants pockets and jacket pockets (**Allegation H: Abuse of Authority: Search**: § 87(2)(g) PO Donovan allegedly took a package of condoms out of one of § 87(2)(b) jacket pocket and allegedly made an unspecified comment about § 87(2)(b) “being gay” (**Allegation I: Offensive Language: Sexual Orientation**: § 87(2)(g) PO Martinez allegedly said, “Who are you fucking, your boyfriend?” to § 87(2)(b) (**Allegation J: Abuse of Authority: Sexual Misconduct**: § 87(2)(g) and **Allegation K: Offensive Language: Sexual Orientation**: § 87(2)(g)

PO Donovan also allegedly lifted § 87(2)(b) shirt over his bellybutton (**Also Allegation H**) and both PO Donovan and PO Martinez allegedly commented that he was “hairy” (also **Allegation C** and **Allegation L: Discourtesy: Word**: § 87(2)(g) The officers then gave § 87(2)(b) his phone and ID back and got back in their car and drove away. PO Martinez and PO Donovan allegedly failed to provide § 87(2)(b) with a business card (**Allegation M** and **Allegation N: Abuse of Authority: Failure to Provide RTKA card**: § 87(2)(g)

Approximately 30 minutes later, § 87(2)(b) and another civilian walked to the 48th Precinct stationhouse. § 87(2)(b) walked up to PO Donovan, who was standing outside the stationhouse, and asked him for his “information.” PO Donovan allegedly did not provide him with his name or shield number (**Allegation O: Abuse of Authority: Refusal to Provide Name**: § 87(2)(g) and **Allegation P: Abuse of Authority: Refusal to Provide Shield Number**: § 87(2)(g) and allegedly said, “I know where to find you, Next time I’m not gonna give you a second chance” (**Allegation Q: Abuse of Authority: Threat of Summons**:

§ 87(2)(g) and **Allegation R: Abuse of Authority: Threat of Arrest:** § 87(2)(g)
§ 87(2)(b) then walked away from PO Donovan and into the 48th Pct. Stationhouse.

§ 87(4-b), § 87(2)(g)

The investigation was unable to obtain video footage of the incident.

Findings and Recommendations

Allegation A: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez stopped § 87(2)(b)

Allegation B: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan stopped § 87(2)(b)

Allegation E: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan threatened to arrest § 87(2)(b)

Allegation F: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan threatened to issue a summons to § 87(2)(b)

§ 87(2)(b) provided a statement over the phone on March 11, 2019 (**Board Review 01**) and an in-person statement on March 29, 2019 (**Board Review 02**). PO Donovan provided a statement at the CCRB on October 23, 2019 (**Board Review 03**) and PO Martinez provided a statement at the CCRB on November 15, 2019 (**Board Review 04**).

§ 87(2)(b) stated that as he walked West on East 178th Street, he had headphones on and was listening to music loudly. He was walking behind a family of three to four people, when he observed a black Ford Fusion driving behind him. He immediately believed that it was an NYPD vehicle because it was going the wrong way on a one-way street. Soon after, § 87(2)(b) observed a male in the group ahead of him turn around and point a finger towards his own chest (not at § 87(2)(b)). The male, along with the remaining civilians, then continued walking West and entered a house before reaching Arthur Avenue. At this point, PO Martinez grabbed him by his right bicep. Shortly after, PO Donovan joined PO Martinez and § 87(2)(b) and told § 87(2)(b) “I could lock you up or give you a ticket,” because he was making “too much noise” and “harassing the family” in front of him.

PO Martinez stated that she and PO Donovan were in their police car when they saw § 87(2)(b) coming out of a deli on the corner of 178th Street and Hughes Avenue. When § 87(2)(b) saw their car, he yelled, “Whoop! Whoop!” very loudly. PO Martinez could not recall the exact number of times § 87(2)(b) yelled this, but she stated it was more than four times. She could not recall exactly how long § 87(2)(b) was yelling for, but it was over five seconds. PO Martinez did not remember how many people were in the area, but there were people on the sidewalk, including a woman with her child, who crossed the street to get away from § 87(2)(b) and looked at the police car. The mother and her young child were on the corner of 178th Street and Hughes Avenue

near § 87(2)(b) but PO Martinez did not remember how close they were to him. PO Martinez did not remember how many other people were in the general area or the reactions of the other people.

PO Martinez and PO Donovan then got out of their car and stopped § 87(2)(b) because he made unreasonable noise and had committed disorderly conduct. PO Martinez heard PO Donovan tell § 87(2)(b) that he could be arrested or summonsed, but that they would let him go because it was Valentine's Day. PO Martinez stated that § 87(2)(b) could have been arrested or summonsed for disorderly conduct: unreasonable noise.

PO Donovan's statement was generally consistent with PO Martinez's. He stated that he and PO Martinez were driving up 178th Street, while § 87(2)(b) walked down the block. As he and PO Martinez passed § 87(2)(b) he heard § 87(2)(b) yell, "whoop! whoop!" approximately two to five times. This lasted approximately 30 seconds. PO Donovan estimated that § 87(2)(b) could have been heard from approximately two to three blocks away.

PO Donovan saw a woman walking with her children, grab them in response to § 87(2)(b) yelling. This woman looked at § 87(2)(b) and then looked at PO Donovan and PO Martinez. She did not say anything to PO Donovan and the officers did not ask her any questions. PO Donovan believed she was scared because of the way she looked at him and PO Martinez and because of the way she grabbed her children. She was approximately two car lengths away from § 87(2)(b) when he made the noise. PO Donovan said that other people were in the area, but he could not recall how many. He did not observe any other people react to § 87(2)(b) yelling, but he noted that he observed the woman's reaction because she and her children were crossing the street in front of their car. PO Donovan did not observe anyone else that appeared to be alarmed by § 87(2)(b) behavior because he was focused solely on § 87(2)(b).

PO Donovan believed that § 87(2)(b) yelled "Whoop! Whoop!" in order to alert people in the area of police. § 87(2)(b) was allowed to do this, but the volume at which he did it was an issue. PO Donovan and PO Martinez communicated that they wanted to stop § 87(2)(b) and they made the decision to stop him, together, but PO Donovan could not recall what they said to each other. The only reason for the stop was because § 87(2)(b) yelled "Whoop! Whoop!" and PO Donovan and PO Martinez interpreted that as disorderly conduct.

PO Donovan told § 87(2)(b) that they stopped him for yelling and being disorderly and he explained that he and PO Martinez were going to use their discretion and not issue him a summons. PO Donovan told § 87(2)(b) "We're going to cut you a break, but stop making noise, because next time I'm going to lock you up and take you to the precinct and give you a summons if I have to. I'm not going to give you a break next time. I'm using my discretion this time, but you gotta cut it out... If I see you next time and you're acting crazy and you're scaring people, you're going to get a summons or get locked up." PO Donovan explained to the investigation that he and PO Martinez could have arrested or summonsed § 87(2)(b) for disorderly conduct-unreasonable noise.

After the incident, PO Donovan prepared Stop Report § 87(2)(b) (Board Review 05). In the section of the report asking the officers for the circumstances that led to the stop, PO Donovan

wrote, “At TPO, defendant was observed with his hands inside his front left jacket pocket clinching an unknown bulge that resembled a possible weapon.” When asked why this was the reason he listed for the stop, PO Donovan said he misinterpreted the form, and thought the section was asking for his narrative regarding why the defendant was frisked.

It is undisputed that PO Martinez and PO Donovan stopped § 87(2)(b) and PO Donovan told him he could be arrested or summonsed.

The level of noise that § 87(2)(b) was making as he walked down 178th Street is disputed. He stated he was listening to music at a high volume, but did not acknowledge yelling, “Whoop! Whoop!” PO Donovan and PO Martinez were consistent in their statements about what § 87(2)(b) was doing and stated that they stopped him because he was yelling at a very high volume. PO Martinez said that § 87(2)(b) was yelling for more than five seconds and PO § 87(2)(b) said he was yelling for approximately 30 seconds, so the investigation determined that if § 87(2)(b) did yell “Whoop! Whoop!” (although it is disputed), it lasted somewhere between 5 and 30 seconds.

PO Martinez and PO Donovan also consistently described a woman walking nearby with children. PO Donovan said he saw this woman grab her children in response to § 87(2)(b) yelling and PO Martinez said she saw this woman cross the street, presumably to get away from § 87(2)(b). § 87(2)(b) also observed a man walking nearby point at him prior to PO Donovan and PO Martinez stopping him.

§ 87(2)(g)

In order to stop a person, a police officer must have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y. 2d 210 (1976) (**Board Review 06**).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: he makes unreasonable noise. NY Penal Code Section 240.20 (**Board Review 07**).

The validity of disorderly conduct charges has turned on the presence or absence of adequate proof of public harm. To determine whether the record supports an inference that the requisite mens rea was present, courts have employed a contextual analysis that turns on consideration of many factors, including the time and place of the episode under scrutiny, the nature and character of the conduct, the number of other people in the vicinity, whether they are drawn to the disturbance and, if so, the nature and number of those attracted, and any other relevant circumstances. The risk of public disorder does not have to be realized but the circumstances must be such that defendant's intent to create such a threat, or reckless disregard thereof, can be readily inferred. People v Baker, 20 NY3d 354 (2013) (**Board Review 08**).

§ 87(2)(g)

§ 87(2)(g)

Allegation D: Force: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan used physical force against § 87(2)(b)

§ 87(2)(b) stated that after PO Martinez first spoke to him, he began walking away from her. He then took out his phone to call his mother, but before he could call her, PO Donovan walked up to him, grabbed the phone out of § 87(2)(b) hands, and pushed him against a wall by placing both of his hands on § 87(2)(b) chest.

PO Donovan stated that once § 87(2)(b) was stopped, he and PO Martinez repeatedly told § 87(2)(b) to take his hands out of his pockets, which he refused to do. Eventually, he did take his hands out of his pockets and was holding his cell phone in his hand. PO Donovan then told him to put his cell phone away several times, because he did not want § 87(2)(b) to use the phone as a weapon. He thought § 87(2)(b) might use the phone to strike him or PO Martinez because he initially refused to remove his hands from his pockets and then refused to put the phone away, he seemed “off,” and he held the phone approximately two to three feet away from PO Donovan and waved it around at about shoulder height. PO Donovan then told § 87(2)(b) that he did not want him to use the phone as a weapon and reached for it, but § 87(2)(b) would not let go of the phone. PO Donovan made physical contact with § 87(2)(b) hand when he grabbed the phone from him, but he could not recall if he made physical contact with any other part of § 87(2)(b) body. He ordered § 87(2)(b) to stand against the wall when he and PO Martinez first stopped him but denied pushing § 87(2)(b) in the chest or pushing him against a wall.

PO Martinez did not remember whether § 87(2)(b) ever took the cell phone out of his pocket and did not remember whether PO Donovan came into possession of the cell phone. She did not recall seeing PO Donovan push § 87(2)(b) against a wall.

§ 87(2)(g)

According to Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person (**Board Review 09**).

§ 87(2)(g)

§ 87(2)(g)

Allegation G: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan frisked § 87(2)(b)

Allegation H: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan searched § 87(2)(b)

§ 87(2)(b) stated that as he walked on 178th Street, he was holding a cigarette in one hand and had his cell phone in his other hand. After PO Donovan and PO Martinez stopped him and PO Donovan took his phone out of his hand, PO Donovan patted down his waist and pants. § 87(2)(b) had condoms, a pair of gloves, and his wallet in the left jacket pocket, while his cigarettes and napkins were in the right jacket pocket. § 87(2)(b) denied that any of the objects he had on his person created a bulge or resembled an outline of a weapon.

§ 87(2)(b) stated that in addition to frisking him, PO Donovan put his hands inside of all of his jacket pockets, including the pockets on the inside of his jacket. PO Donovan also lifted § 87(2)(b) shirt up, exposing his stomach and ran his fingers on the inside of § 87(2)(b) shoes.

PO Donovan stated that he frisked § 87(2)(b) because there was a bulge in his pocket caused by § 87(2)(b) phone, keys, and wallet. The investigation asked PO Donovan to clarify when in the course of the incident the frisk took place, because initially he stated that he frisked § 87(2)(b) after he had taken his phone out of his pocket. PO Donovan stated that § 87(2)(b) was clutching what appeared to be a hard object in his front left jacket pocket. When § 87(2)(b) refused to take his hands out of his pockets, PO Donovan got closer to him and asked what he had in his pocket. He then frisked § 87(2)(b) front left jacket pocket area and as he was doing this, either PO Donovan pulled § 87(2)(b) hand out of his pocket or § 87(2)(b) took his hand out of his pocket on his own accord and revealed that he was holding his phone. Simultaneously, PO Donovan could feel § 87(2)(b) keys and wallet in his pocket.

When asked what he thought the bulge in § 87(2)(b) pocket was, PO Donovan stated that he thought it was a gun because it was L-shaped and that it was “bulgy” and “lumpy.” When asked why he thought this bulge was a gun instead of a phone or wallet, PO Donovan stated that he thought it was a gun because of the L shape, because § 87(2)(b) refused to take his hands out of his pockets, and because they were in a “high-crime area.” When asked by the investigation, how big the object looked, PO Donovan said that the shape was big enough where it could have been a firearm and that “firearms come in all sizes.” When asked to specify the size, PO Donovan stated that the bulge was approximately five or six inches and described it as the “length of a cell phone.”

PO Donovan said he did not enter § 87(2)(b) pockets and did not frisk him anywhere aside from the front left jacket pocket. PO Donovan denied putting his hands in any of § 87(2)(b) pockets and denied running his finger on the inside of § 87(2)(b) shoes. He did not recall lifting up § 87(2)(b) shirt.

PO Martinez stated that she believed PO Donovan frisked § 87(2)(b) pocket to ensure he had no weapons in it as he had his hands inside his pockets and refused to remove them after being asked more than three times. PO Martinez did not remember anything alarming about § 87(2)(b) appearance. § 87(2)(b) pockets were sticking out due to his hands being in his pockets, but PO Martinez was not sure whether the bulge in his pockets was his hands. PO Martinez believed his hand was clenched like a fist and held closely to his body. PO Donovan frisked the outside of § 87(2)(b) jacket pocket. PO Martinez did not remember PO Donovan frisking § 87(2)(b) anywhere else. She also did not observe him put his hands in any of § 87(2)(b) pockets, run his finger on the inside of § 87(2)(b) shoes, or lift up § 87(2)(b) shirt.

The stop report PO Donovan prepared was consistent with his statement. In the stop report, PO Donovan wrote, “At TPO, defendant was observed with his hands inside his front left jacket pocket clinching an unknown bulge that resembled a possible weapon...while attempting to frisk the pocket in his front left jacket, defendant simultaneously pulled out the object which was revealed to be a cell phone.” The stop report stated that § 87(2)(b) was not searched.

§ 87(2)(g)

An officer who reasonably suspects that a detainee is armed may conduct a frisk or take other protective measures even in the absence of probable cause to arrest. To conduct a frisk or pat down, in the absence of probable cause, however, the officer must have knowledge of some fact or circumstance that supports a reasonable suspicion that the suspect is armed or poses a threat to safety. Relevant considerations in the determination of whether there is reasonable suspicion that the suspect poses a danger include, among others, the shape, size, and location of any bulges in the suspect's clothing. People v. Shuler, 98 A.D.3d 695. (**Board Review 10**).

§ 87(2)(g)

Allegation C: Discourtesy: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez spoke discourteously to § 87(2)(b)

Allegation I: Offensive Language: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan made remarks to § 87(2)(b) based upon sexual orientation.

Allegation J: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez sexually humiliated § 87(2)(b)

Allegation K: Offensive Language: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez made remarks to § 87(2)(b) based upon sexual orientation.

Allegation L: Discourtesy: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan made remarks to § 87(2)(b) based upon physical appearance.

§ 87(2)(b) stated that after PO Martinez made physical contact with him in order to stop him, he asked her to identify herself. In response, PO Martinez said, “You know who the fuck we are.” Then, while the officers were searching him, PO Donovan took a pack of condoms out of his jacket pocket. PO Donovan proceeded to make a comment about § 87(2)(b) being gay. § 87(2)(b) could not recall the exact statement that PO Donovan made. When PO Martinez saw the condoms, she said, “Who are you fucking? Your boyfriend?” Additionally, when PO Donovan lifted § 87(2)(b) shirt, both PO Donovan and PO Martinez pointed out that he was hairy.

PO Martinez stated that she approached § 87(2)(b) from behind and said, “Hey, stop! Police Officer!” She had her shield out as she approached him. PO Martinez did not remember § 87(2)(b) asking to identify herself or saying, “I don’t know who you are.” PO Martinez denied saying, “You know who the fuck we are”

PO Donovan stated that after he and PO Martinez decided to stop § 87(2)(b) he turned on their car’s turret lights. He yelled out the window of the car, “Police stop. Let me talk to you” and had their shields hanging around their necks. PO Donovan and PO Martinez both told § 87(2)(b) to stop and that they wanted to talk to him multiple times, but he continued to walk away. PO Martinez then got out of the car and shortly after PO Donovan got out of the car as well and followed § 87(2)(b) who eventually stopped. PO Donovan did not hear § 87(2)(b) ask PO Martinez to identify herself, and he did not hear PO Martinez say, “You know who the fuck we are.”

PO Donovan and PO Martinez were consistent that officer ever became aware that § 87(2)(b) had condoms on his person and they both denied making or hearing their partner make any comments about § 87(2)(b) being gay. PO Martinez denied saying, “Who are you fucking? Your boyfriend?” and PO Donovan did not hear her say this. Additionally, PO Donovan and PO Martinez denied making any comments about § 87(2)(b) being hairy and neither of them heard the other make such comments.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation M: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Miguel Donovan failed to provide § 87(2)(b) with a business card.

Allegation N: Abuse of Authority: On East 178th Street between Arthur Avenue and Hughes Avenue in the Bronx, Police Officer Sandra Martinez failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) stated that after PO Donovan searched him, PO Martinez handed him his ID and PO Donovan gave him back his cellphone. They then walked to their car and drove away without providing him with a business card.

PO Donovan and PO Martinez were consistent in their statements. Both officers stated that they offered business cards to § 87(2)(b) but he said he just wanted to leave and see his girlfriend, so he did not take their cards.

§ 87(2)(g)

Allegation O: Abuse of Authority: At the 48th Precinct Stationhouse in the Bronx, Police Officer Miguel Donovan refused to provide his name to § 87(2)(b)

Allegation P: Abuse of Authority: At the 48th Precinct Stationhouse in the Bronx, Police Officer Miguel Donovan refused to provide his shield number to § 87(2)(b)

Allegation Q: Abuse of Authority: At the 48th Precinct Stationhouse in the Bronx, Police Officer Miguel Donovan threatened to issue a summons to § 87(2)(b)

Allegation R: Abuse of Authority: At the 48th Precinct Stationhouse in the Bronx, Police Officer Miguel Donovan threatened to arrest § 87(2)(b)

Approximately 30 minutes after PO Martinez and PO Donovan drove away, § 87(2)(b) and another civilian, whose name he refused to provide to the investigation, walked over to the 48th Precinct stationhouse. § 87(2)(b) saw PO Donovan standing outside of the stationhouse and asked him for his “information.” PO Donovan replied, “Why are you doing this? You know you did wrong.” § 87(2)(b) replied, “I came here to get your information” and PO Donovan answered, “You do what you wanna do. I know where to find you. Next time I’m not gonna give you a second chance.” § 87(2)(b) interpreted PO Donovan’s statement as a threat of physical force and arrest. § 87(2)(b) walked away from PO Donovan and PO Donovan did not provide him with his name or shield number.

PO Donovan stated that he was in his police car outside of the stationhouse when he observed § 87(2)(b) and § 87(2)(b) girlfriend walking towards the stationhouse. They appeared to see him, and § 87(2)(b) said something to his girlfriend, and they both approached PO Donovan. PO Donovan got out of the car. The girlfriend asked PO Donovan why he stopped § 87(2)(b) and PO Donovan provided an explanation. She asked him what his name and shield number were, and PO Donovan told her his name and shield number. § 87(2)(b) was standing next to his girlfriend, but PO Donovan did not recall if he spoke to § 87(2)(b) at the stationhouse. PO Donovan did not recall § 87(2)(b) asking him for his name and shield number.

PO Donovan denied saying, “You do what you wanna do. I know where to find you. Next time, I’m not going to give you a second chance.” PO Donovan stated that at the initial incident location (where the stop occurred), he said, “Next time you might not get so lucky. We might not give you a chance. We might give you a summons or lock you up,” (See **Allegations E and F**). He denied saying, “we know where to find you.”

PO Martinez was not present for this interaction at the stationhouse and § 87(2)(b) refused to identify the civilian he was with at the stationhouse.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

§ 87(4-b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 12**).
- PO Donovan has been a member of service for eight years and has been a subject in ten complaints and 36 allegations, of which one was substantiated.
 - CCRB Case 201301780 involved a substantiated frisk against PO Donovan. The board recommended charges and the NYPD imposed instructions.
 - § 87(2)(g)
- PO Martinez has been a member of service for six years and has been a subject in 11 complaints and 26 allegations of which one was substantiated.
 - CCRB Case 201805676 involved a substantiated frisk against PO Martinez. The board recommended charges, and they NYPD has yet to impose discipline.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of February 13, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (**Board Review 13**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 10

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date